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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,
Plaintiff, Counter-defendant,
v.
APPLE INC.,
Defendant, Counterclaimant.

Case No. 4:20-CV-05640-YGR-TSH

**EPIC GAMES, INC.'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL PORTIONS OF ITS
OPPOSITION TO APPLE INC.'S
MOTION TO STRIKE WRITTEN AND
ORAL TESTIMONY OF DR. MICHAEL
I. CRAGG**

The Honorable Yvonne Gonzalez Rogers

1 Plaintiff Epic Games, Inc. (“Epic”) brings this administrative motion under Civil Local
 2 Rules 7-11(a) and 79-5(d)-(e) for an order granting Epic leave to file under seal portions of
 3 Plaintiff Epic Games, Inc.’s Opposition to Defendant Apple Inc.’s Motion to Strike Written and
 4 Oral Testimony of Dr. Michael I. Cragg.

5 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a
 6 party “establishes that the documents, or portions thereof, are privileged, protectable as a trade
 7 secret, or otherwise entitled to protection under the law.” Civ. L. R. 79-5(b). Under this standard,
 8 a party seeking to seal a document generally must overcome the “strong presumption in favor of
 9 access” that applies to court documents other than those that are traditionally kept secret.
 10 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted).
 11 However, the “public has less of a need for access to court records attached only to non-
 12 dispositive motions because those documents are often ‘unrelated, or only tangentially related to
 13 the underlying cause of action.’” *Id.* at 1179 (citations omitted). Instead, a “‘good cause’ showing
 14 under Rule 26(c) [of the Federal Rules of Civil Procedure] will suffice to keep sealed records
 15 attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA Student-Athlete Name & Likeness*
 16 *Licensing Litig.*, 2013 WL 3014144, at *1 (N.D. Cal. June 17, 2013). A party seeking to seal such
 17 material must make a “particularized showing of good cause with respect to any individual
 18 document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187 F.3d 1096,
 19 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-5(b).

20 Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party seeks to
 21 file information designated as confidential by an opposing party or a non-party. This
 22 Administrative Motion concerns portions of the Opposition containing information that non-party
 23 Spotify USA Inc. (“Spotify”) has designated as “SPOTIFY HIGHLY CONFIDENTIAL –
 24 OUTSIDE COUNSEL EYES ONLY” under the supplemental protective order entered in the
 25

1 above-captioned case (specifically, PX-1153, bearing Bates range SPOT-EPIC-00001023-1025,
 2 which is subject to a pending motion to seal by Spotify (*see* ECF No. 649)), and portions of the
 3 Opposition discussing trial testimony provided by Dr. Cragg during a closed session of Court on
 4 May 13, 2021 (Trial Tr. 2335:1-2346:15), during which Dr. Cragg referenced materials that
 5 Spotify also has designated as “SPOTIFY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL
 6 EYES ONLY” (specifically, PX-1153, bearing Bates range SPOT-EPIC-00001023-1025, which,
 7 as noted, is subject to a pending motion to seal by Spotify (*see* ECF No. 649), and the document
 8 bearing Bates range SPOT-EPIC-00001047-1066, which is also subject to a pending motion to
 9 seal by Spotify (*see* ECF No. 692)).
 10

11 Accordingly, Epic is filing portions of its Opposition under seal. In light of the
 12 aforementioned motions to seal by non-party Spotify, Epic respectfully submits that sealing for
 13 this narrow purpose is appropriate.
 14

15 Dated: May 17, 2021

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Respectfully submitted,

By: /s/ Yonatan Even
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